BEST COPY
AVAILABLE

MONTANA LEGISLATIVE HISTORY

Chapter 391 19 91

Bill H 635 S _____ Original bill & history ____C

H. Committee on Judiciary			S. Committee on Public Health, Welfare & Safety		
Hearing Date(s)	Feb 12	✓ C	Hearing Date(s)	Mar 18	✓ C
	Feb 13	✓ C		Mar 25	✓ C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Feb 13	✓ C		Mar 26	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 632 INTRODUCED BY BROOKE, ET AL.
REVISE CONFLICT OF INTEREST AND FINANCIAL DISCLOSURE LAW

2/06	INTRODUCED		
2/06	REFERRED TO STATE ADMINISTRATION		
2/06	FISCAL NOTE REQUESTED		
2/06	FIRST READING		
2/12	FISCAL NOTE RECEIVED		
2/13	FISCAL NOTE PRINTED		
2/14	HEARING		
2/20	TABLED IN COMMITTEE		

HB 633 INTRODUCED BY BROOKE, ET AL.
REVISE ETHICS LAWS FOR LEGISLATORS

2/06	INTRODUCED		
2/06	REFERRED TO STATE ADMINISTRATION		
2/06	FIRST READING		
2/14	HEARING		
2/14	TABLED IN COMMITTEE		

HB 634 INTRODUCED BY COHEN, ET AL.
RESTRICTING CONTRIBUTIONS BETWEEN CANDIDATES AND PACS

2/06	INTRODUCED		
2/06	REFERRED TO STATE ADMINISTRATION		
2/06	FIRST READING		
2/13	HEARING		
2/20	TABLED IN COMMITTEE		

HB 635 INTRODUCED BY MEASURE, ET AL.
REVISE UNIFORM RIGHTS OF THE TERMINALLY ILL ACT

2/06	INTRODUCED		
2/06	REFERRED TO JUDICIARY		
2/06	FIRST READING		
2/12	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED		
2/16	2ND READING PASSED AS AMENDED	92	6
2/19	3RD READING PASSED	94	6
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/18	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED		
3/28	2ND READING CONCURRED	46	2
4/01	3RD READING CONCURRED	40	9
	RETURNED TO HOUSE		
4/03	SIGNED BY SPEAKER		
4/03	SIGNED BY PRESIDENT		
4/03	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 391	EFFECTIVE DATE: 4/08/91	

HB 636 INTRODUCED BY ELLIOTT, ET AL.
EXTEND SPECIAL PROVISIONS TO LOCAL GOVERNMENT AUTHORITY TO HAUL WASTE

2/06	INTRODUCED		
2/06	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/06	FIRST READING		
2/14	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING DO PASS AS AMENDED FAILED	28	67

$500 a day fine and allows it to stay in the present statute. REP. TOOLE then asked what the rational is for changing quasi authority? REP. WHALEN said the Montana Power Company didn't like it.

Closing by Sponsor:none

HEARING ON HB 635
UNIFORM RIGHTS OF THE TERMINALLY ILL ACT

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE MEASURE, HOUSE DISTRICT 6, stated he rises in support of HB 635 revising Montana Living Will Act. It conforms with the uniform rights of the Terminally Ill Act. The problem with it are in the areas of those without protections under a declaration of a living will presently primarily and also the needs of the medical community and others that have to make the decision to those individuals where there is no clear declaration of their intent. The bill provides where an act of declaration is not available for the medical communities, the service provider, or the family to make the declaration, subsequent to the individuals inability to make the declaration themselves. In addition, there are provisions for the treating physician to make that decision as well.

Proponents' Testimony:

Steve Browning, Montana Hospital Association, stated the Uniform Rights of the Terminally Ill Act is a model bill that has worked as a living will act. With it a person can direct a physician to withhold or withdraw life sustaining treatment or designate another individual for making the decision of withhold or withdraw life sustaining treatment. It gives decision making authority to certain family members so that patients who do not set out their wishes in writing, can have medical decisions made on their behalf by the people in the best position who know their personal values and treatment preferences. This is a good bill and I hope you support this bill.

John Ortwein, Montana Catholic Conference, gave written testimony in favor of HB 635. **EXHIBIT 2**

Hank Hudson, Aging Coordinator - Governor's Office, gave written testimony in favor of HB 635. **EXHIBIT 3**

Fred Patten, American Association of Retired People, stated they are in support of this bill and ask the committee to give it a do pass.

Opponents' Testimony:none

Questions From Committee Members:

REP. MESSMORE asked **Mr. Hudson** if he finds most living seniors do have a living will in affect and if those living wills are honored? **Mr. Hudson** said he does believe they are being honored because a case of not honoring them has not been brought to my attention. The problems we have seen is when there has not been any directions left, and disagreement and confusion is being seen among family members. It is our impression that physicians and healthcare providers welcome the living will and honor them.

REP. TOOLE asked **Mr. Browning** if every situation does require the patient has to be in a mental condition that he is no longer able to make the decision regarding what he or she may want done? **Mr. Browning** said that has always been the case. If they are in the position they can make a decision they will make it. **REP. TOOLE** then asked if there is a case such as a person who is mentally incompetent but capable of living for any length of time, wouldn't that be a case to fall through the cracks? **Mr. Browning** said that is a special case and it would probably be taken to court such as the Cruzan Case.

REP. RICE asked **Mr. Browning** that some people do not want a living will and their spouse does. It appears there is a particular change in the law as to what options we can give to people. I read this bill as saying, if you don't make a declaration, you are not only deciding that you don't want to be unplugged you are deciding you want someone else to make that decision. It seem we would force people to make a living will declaration if they want to be in control of their own destiny. Can you respond to this? **Mr. Browning** said it isn't quite that black and white that if you don't make a living will, therefore, you have decided you don't want to be unplugged. It may mean that or you haven't decided anything and the way this operates in respect to the consent section, it doesn't require the person to provide consent to conclude you did not want to have life support withdrawn. The family has to decide in good faith what you would want.

REP. LEE asked **Mr. Browning** if the a person who in effect, does not make that decision, do they have to have that decision made for them? **Mr. Browning** said he didn't know what the family member is going to do decide. This type of situation is not a prevalent as you might think. Many people talk about this type of thing with their family members and it is well known what that person may or may not want done to them.

Closing by Sponsor:

REP. MEASURE stated this is a difficult area of law that always has been difficult. I would ask the committee to consider this bill and give it a do pass.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-12-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		✓
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		✓
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

Montana Catholic Conference

HB 635
February 12, 1991

EXHIBIT 2
DATE 2-12-91
HB 635

CHAIRMAN STRIZICH AND MEMBERS OF THE COMMITTEE

I am John Ortwein, representing the Montana Catholic Conference. I serve as the liaison for the two Roman Catholic Bishops of the State of Montana in matters of public policy.

The National Bishops' Committee on Pro-Life Activities has not endorsed or encouraged the enactment of living will legislation. However, as the number of states that have enacted living will legislation has grown, the Committee has sought to provide guidance by pointing to problems which deserve the special attention of legislators such as yourselves. To this end the Committee has developed two documents entitled: Guidelines for Legislation on Life-Sustaining Treatment (1984) and Statement on the Uniform Rights of the Terminally Ill Act (1986). The latter document is particularly relevant because the Montana Living Will law is based on the Uniform Act. The two guiding principles used by the Committee are : (1) One is obliged to use "ordinary" means of preserving life--that is, means which can effectively preserve life without imposing grave burdens on the patient--and the failure to supply such means is "equivalent to euthanasia"; and (2) Recognition of the patient's right to refuse "extraordinary" means--that is, means which provide no benefit or which involve too grave a burden.

The Montana Catholic Conference has several concerns about HB 635. The first deals with the definition of "terminal condition" on page 3, line 24. This definition is extremely important because it defines the overall scope of the bill. A proxy decisionmaker can demand withholding or withdrawal of virtually any health care that sustains life so long as the patient is in a "terminal condition." A patient is terminal so long as he/she will die in a "relatively short time" if treatment is not administered. This will allow for withdrawal of ethically ordinary means from otherwise medically stable patients to hasten their deaths, even if the patient could have lived a long time with the continued use of some easily provided form of assistance. For example, a mentally incompetent but otherwise robust diabetic person could be classified as "terminal" under this bill (because his diabetes is not curable and he will die soon without insulin). Then, by one interpretation of the bill, the insulin could be removed, because continuing the insulin would only "prolong dying" (that is, it will only prolong existence in this "terminal condition" albeit for many years).

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

Ex. 2
2-12-91
HB 635

Our concern is that the bill fails to distinguish between ordinary and extraordinary means of treatment. If a patient is terminal in the more traditional sense of the term--i.e., is dying soon no matter what we do for him or her, we can reasonably conclude that most forms of life-sustaining treatment are useless and therefore morally optional. If a patient needs some treatment to survive, and can live a long time with its provision, we would see a moral obligation to provide this beneficial treatment unless its use imposes grave burdens. Because the proposed legislation covers patients in this latter category and makes no distinction between treatments that are or are not gravely burdensome, it could authorize denial of ordinary means of survival.

We would suggest that the patient is in a "terminal condition" if he or she will die in a short time "notwithstanding the administration of life-sustaining treatment" or words to that effect.

Our second concern arises on page 9 of the bill (Section 6, lines 19 and 20). In both the 1984 and 1986 statements I referred to earlier, the Bishops' Committee urged the establishment of a strong presumption in favor of hydration and nutrition. The proposed legislation fails to establish such a presumption. The clause on "comfort care", though welcome, does not help solve this issue. The unconscious or otherwise incompetent patients generally singled out for removal of all food and fluids will be seen as incapable of feeling the discomfort of dehydration--and if there is any question, analgesics could be provided during the dehydration process to prevent conflict with the law's "comfort care" requirement. To us the fundamental issue is that nutrition and hydration could be denied by a proxy decisionmaker even in cases where it is morally an ordinary means for sustaining life. Recently, the Pennsylvania Catholic Conference advocated that artifical feeding couldn't be withheld from a person unless they stated in a signed living will document that they didn't want it if they became terminally ill or comotose. We would advocate such a statement in the proposed legislation.

Again, the Catholic Conference on the national level has taken a neutral position on living will legislation. However, the Bishops' Pro-Life Committee has set out guidelines to help in the discussion of proposed legislation. This would be our intent here today. I would hope our suggestions to the proposed legislation will be helpful in the discussion of living will legislation as this is a life and death issue for the most helpless members of our society.

EXHIBIT 3
DATE 2-12-91
HB 635

GOVERNOR'S OFFICE ON AGING

STAN STEPHENS, GOVERNOR

(406) 444-3111

STATE OF MONTANA

February 11, 1991

CAPITOL STATION
HELENA, MONTANA 59604

TO: House Judiciary Committee
Rep. Bill Strizich, Chairman

FROM: Hank Hudson, Aging Coordinator

RE: HB 635, Uniform Rights of the Terminally Ill Act

These changes and additions to what is currently known as Montana's Living Will Act are supported by the Governor's Office on Aging.

Of particular interest to advocates for senior citizens are the following provisions of the bill:

1. Language within the model declaration that clarifies the definition of "incurable or irreversible condition."

2. Provisions for designating another individual to make decisions for you if you are terminally ill and unable to make decisions.

3. Recognition that our current durable power of attorney statute may be used to appoint a health care decision-maker for these situations.

4. A procedure for obtaining consent by others in the event no declaration has been executed.

These changes will increase the utility of the living will and address those situations in which no advance directives exist.

If this legislation is enacted the Aging Services Network, including the Area Agencies on Aging and Community Senior Centers around the State, will work to inform seniors of these changes and provide access to these decision-making tools.

AN EQUAL OPPORTUNITY EMPLOYER

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB# 635

DATE 2-12-91 SPONSOR(S) Rep. Measure

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John Ortwein	MT Catholic Conference	✓	
Steve Browning	MT Hospital Assn	✓	
Fred Patton	AARP	✓	
William Olson	AARP	✓	
Rose Hughes	MT. Health Care Assn	✓	
Dayne C. Galley	Interested citizen		
Alvin B. Ludstad	AARP	✓	
Martha Anne Walker	Self - Helena, MT.	✓	
Meter Heller	Plentywood MT	✓	
Rich E Miller			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

EXECUTIVE ACTION ON HB 428

Motion: REP. GOULD MOVED HB 428 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 635

Motion: REP. MEASURE MOVED HB 635 DO PASS.

Discussion: John MacMaster stated that this bill deals with a similar subject as a few other bills. We want to make sure we don't cause any conflict between this bill and the others.

REP. MEASURE stated Sen. Brown's bill has to do more with power of attorney's and is expansive compared to the living will provisions of this bill. HB 635 deals with the power of attorney also. I feel this bill is quite separate from those two.

REP. RICE stated he has some concerns about the bill and would like some extra time to work up some possible amendments. He said as the bill is now there are alot of people who have made decisions about whether to have a living will or not. Those people who have chosen not to have a living will because they do not to be unplugged, have decided to give this right to someone else. Namely, the family member. I have a concern that we will have to run down those people who have elected to make the decision and tell them your decision not to have a living a will has now been superseded by legislation saying because you made that decision you have given that right to someone else. We need to address that somehow and I am not sure how to do that.

REP. MEASURE stated the provisions before the bill said the family would be in a position to make that decision. If you don't do that you are in a situation where the family can't make a decision even in light of the victims wishes and their knowledge of it. That is the position we are in now. Those family members are in a strong position to make those types of decisions of the terminally ill. But some doctors are not going to make the decision because they recognize the rights of the terminally ill to die peacefully. It can be one way or the other. Either those people are excluded from making those decisions or they are included.

REP. BROOKE stated that the bill is well drafted and meets the needs that families dealing with someone who is terminally ill have. I think a family needs the option to make that decision ahead of time for the terminally ill person.

Vote: Motion carried with Rep's: Whalen, Lee and Rice voting no.

HOUSE STANDING COMMITTEE REPORT

February 13, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 635 (first reading copy -- white) do pass .

Signed: _____

Bill Strizich, Chairman

331123SC.HSF

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 2-13-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI			✓
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

Senator Franklin said the worst case scenario would be that an individual would need in-patient mental health treatment but not be connected to the community based mental health system.

Mr. Anderson said their are funds devoted to that process.

Senator Franklin said her concern was that it was not explicit in the bill and that community based systems will not have adequate funds.

Mr. Anderson said they will pay for the screening process and has been paid for in previous years. It has not been well coordinated.

Closing by Sponsor:

Senator Keating closed by thanking the committee for a good hearing.

HEARING ON HOUSE BILL 635

Presentation and Opening Statement by Sponsor:

Representative Bruce Measure opened by saying HB 635 pertains to living wills. Montana has one of the more progressive Living Will Acts in the nation. This bill revises the Act to conform with the Uniform Rights of the Terminally Ill Act, which is a national regulation. This will allow someone to draft a living will. If someone were to get into a position where they were in a vegetative state the health care professionals could be notified of the living will and make the medical decisions based upon the desires expressed in the living will. It allows both the physician and the families to conference on addressing the decisions that the patient made but did not reduce to writing. He read from the bill. He said the definition of 'a relatively short time,' lead to confusion. He referred to page 2, line 17 (7). He said a person had to be in the process of dying. He asked the chairman to recognize the witnesses.

Proponents' Testimony:

The first witness was John Ortwein, representing the Montana Catholic Conference. See Exhibit #10 for a copy of his testimony.

The second witness was Steve Browning, representing the Montana Hospital Association. He said everyone in the room has probably thought about this issue. As a lawyer he has spent hundreds of hours working on these issues. The latest incident was the United States Supreme Court decision of Cruzan versus Missouri. This bill came at a timely moment.

Mr. Browning continued by saying the National Conference on the Commission of Uniform State Laws was meeting and developed their new set of recommendations. See Exhibit #11 for a copy of his hand-out. The principal change in this bill from Montana's existing law on living wills, is that it begins to deal with the subject of decisionmaking. If you recall the case of Nancy Cruzan, her parents were trying to make the decision for her because she had not left a living will. Although she had expressed to other people her views about what she would like to have happen to her if she found herself in a comatose situation that was irreversible. Two recommended changes were made. Section 3, page 4, 'Declaration relating to the use of Life Sustaining Treatment'. This allows a designee to make decisions for the patient. This language begins on line 12 through line 15. Page 6, line 6, deals with the composition of the designation. The second change is related to this. It is a new section, page 16, line 2. He read this section of the bill. The bill establishes a list of priorities, starting with the spouse of the individual, an adult child, parents and others. On page 17, the decision to grant or withhold consent must be made in good faith. The consent is not valid if it conflicts with the expressed intention of the individual. Page 13, lines 20 through 24, this chapter does not require a physician or other health care provider to take action contrary to reasonable medical standards. Is it reasonable for a physician to allow the withholding of insulin from a diabetic. Page 13, line 23 (7), this chapter does not condone, authorize or approve mercy killing or euthanasia. That is clarifying existing law. He explained Exhibit #11 to the committee.

The third witness was Hank Hudson, director of the Governor's Office on Aging. He said they support the bill. The good part in this bill is the provision of appointing another person to make the decisions, it eliminates having to hire an attorney. All of the provisions are agreeable to the Governors Council on Aging.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Towe asked Representative Measure about several areas of concern. First, the position of Mr. Ortwein. Is their a problem regarding abuse because of the problem with the definition of terminal illness.

Representative Measure said the definitions presently in the law do not change under this Act. The expansion of the Act and its relationship with the definitions should not pose a problem. Physicians have a code of ethics of which they will be working from. It is a difficult situation for any family to be placed in.

Representative Measure continued by saying it would provide the ability for an individual who did know the intentions of the patient to communicate them to the physician.

Senator Towe said it has to be the conclusion of the physician that it is an irreversible situation. It cannot apply to a condition that limits quality of life.

Representative Measure said that is not a legal implication of the bill but is what the medical community would decide. He read from page 13 of the bill. He said his conclusion was probably correct.

Senator Towe asked about the Emergency Medical Services allowing an individual to refuse medical treatment.

Representative Measure said Representative Brooke has introduced a bill that pertains to this area. A person can wear a designation regarding resuscitation.

Senator Hager asked Representative Measure about Mr. Ortwein's suggested language.

Representative Measure said he would resist that amendment because of the last line pertaining to life support equipment. Some people are opposed to artificial preservation of life.

Senator Hager said he had a problem with the phrase, 'death within a relatively short period of time'.

Representative Measure said they were unable to agree upon any better language. Within the confines of this Act and within the medical professions code of ethics, it is cross-referenced in several areas. A finding may have to be made by the medical community that the person is dying.

Senator Hager said he had problems with the bill.

Senator Towe asked Mr. Browning to comment.

Mr. Browning said this issue was dealt with at great length by the Uniform Code of Commissioners. He said his hand-out has extensive descriptions of these areas. Individuals have the right to indicate their positions.

Closing by Sponsor:

Representative Measure closed by thanking the committee for a good hearing and said the bill was well presented.

ROLL CALL

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

Date 03/18/91

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BURNETT	X		
SENATOR FRANKLIN	X		
SENATOR HAGER	X		
SENATOR JACOBSON	X		
SENATOR PIPINICH	X		
SENATOR RYE	X		
SENATOR TOWE	X		
SENATOR ECK	X		

Each day attach to minutes.

Montana Catholic Conference

HB 635
MARCH 18, 1991

SENATE HEALTH & WELFARE
EXHIBIT NO. 10
DATE 3/18
H BILL NO. 635

MADAM CHAIRMAN ECK AND MEMBERS OF THE COMMITTEE

I am John Ortwein, representing the Montana Catholic Conference. I serve as the liaison for the two Roman Catholic Bishops of the State of Montana in matters of public policy.

The National Bishops' Committee on Pro-Life Activities has not endorsed or encouraged the enactment of living will legislation. However, as the number of states that have enacted living will legislation has grown, the Committee has sought to provide guidance by pointing to problems which deserve the special attention of legislators such as yourselves. To this end the Committee has developed two documents entitled: Guidelines for Legislation on Life-Sustaining Treatment (1984) and Statement on the Uniform Rights of the Terminally Ill Act (1986). The latter document is particularly relevant because the Montana Living Will law is based on the Uniform Act. The two guiding principles used by the Committee are : (1) One is obliged to use "ordinary" means of preserving life--that is, means which can effectively preserve life without imposing grave burdens on the patient--and the failure to supply such means is "equivalent to euthanasia"; and (2) Recognition of the patient's right to refuse "extraordinary" means--that is, means which provide no benefit or which involve too grave a burden.

The Montana Catholic Conference has several concerns about HB 635. The first deals with the definition of "terminal condition" on page 3, line 25. This definition is extremely important because it defines the overall scope of the bill. A proxy decisionmaker can demand withholding or withdrawal of virtually any health care that sustains life so long as the patient is in a "terminal condition." A patient is terminal so long as he/she will die in a "relatively short time" if treatment is not administered. This will allow for withdrawal of ethically ordinary means from otherwise medically stable patients to hasten their deaths, even if the patient could have lived a long time with the continued use of some easily provided form of assistance. For example, a mentally incompetent but otherwise robust diabetic person could be classified as "terminal" under this bill (because his diabetes is not curable and he will die soon without insulin). Then, by one interpretation of the bill, the insulin could be removed, because continuing the insulin would only "prolong dying" (that is, it will only prolong existence in this "terminal condition" albeit for many years).

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

Our concern is that the bill fails to distinguish between ordinary and extraordinary means of treatment. If a patient is terminal in the more traditional sense of the term--i.e., is dying soon no matter what we do for him or her, we can reasonably conclude that most forms of life-sustaining treatment are useless and therefore morally optional. If a patient needs some treatment to survive, and can live a long time with its provision, we would see a moral obligation to provide this beneficial treatment unless its use imposes grave burdens. Because the proposed legislation covers patients in this latter category and makes no distinction between treatments that are or are not gravely burdensome, it could authorize denial of ordinary means of survival.

We would suggest that the patient is in a "terminal condition" if he or she will die in the immediate future even if life support therapy is utilized. Our second concern arises on page 9 of the bill (Section 6, lines 22-24). In both the 1984 and 1986 statements I referred to earlier, the Bishops' Committee urged the establishment of a strong presumption in favor of hydration and nutrition. The proposed legislation fails to establish such a presumption. The clause on "comfort care", though welcome, does not help solve this issue. The unconscious or otherwise incompetent patients generally singled out for removal of all food and fluids will be seen as incapable of feeling the discomfort of dehydration--and if there is any question, analgesics could be provided during the dehydration process to prevent conflict with the law's "comfort care" requirement. To us the fundamental issue is that nutrition and hydration could be denied by a proxy decisionmaker even in cases where it is morally an ordinary means for sustaining life. Recently, the Pennsylvania Catholic Conference advocated that artifical feeding couldn't be withheld from a person unless they stated in a signed living will document that they didn't want it if they became terminally ill or comotose. I have attached a copy of the Pennsylvania's proposed legislation with my testimony.

Again, the Catholic Conference on the national level has taken a neutral position on living will legislation. However, the Bishops' Pro-Life Committee has set out guidelines to help in the discussion of proposed legislation. This would be our intent here today. I would hope our suggestions to the proposed legislation will be helpful in the discussion of living will legislation as this is a life and death issue for the most helpless members of our society.

hibit # 10
18/91 HB 635

SECTION 12. NUTRITION AND HYDRATION.

(A) PRESUMPTION.--IT IS PRESUMED THAT EVERY INCOMPETENT PERSON HAS DIRECTED HIS HEALTH CARE PROVIDERS TO PROVIDE HIM WITH NUTRITION AND HYDRATION TO A DEGREE THAT IS SUFFICIENT TO SUSTAIN LIFE. THIS PRESUMPTION SHALL NOT APPLY IN ANY OF THE FOLLOWING CIRCUMSTANCES:

(1) IF THE INCOMPETENT PERSON HAS A DECLARATION EXECUTED PURSUANT TO THE ACT WHICH SPECIFICALLY AUTHORIZED THE WITHHOLDING OR WITHDRAWAL OF NUTRITION AND HYDRATION AND THE PERSON HAS A TERMINAL CONDITION OR IS PERMANENTLY UNCONSCIOUS.

(2) IF THE INCOMPETENT PERSON HAS A TERMINAL CONDITION OR IS PERMANENTLY UNCONSCIOUS AND THE ATTENDING PHYSICIAN KNOWS, BY CLEAR AND CONVINCING EVIDENCE, THAT THE PERSON WHILE COMPETENT HAD MADE THE DECISION TO FOREGO NUTRITION AND HYDRATION OR TO HAVE NUTRITION AND HYDRATION WITHDRAWN, PROVIDED THAT SUCH DECISION WAS CLEARLY EXPRESSED AND SPECIFICALLY RELATED TO THE PROVISION OF NUTRITION AND HYDRATION.

(3) IF, IN THE REASONABLE MEDICAL OPINION OF THE

ATTENDING PHYSICIAN, THE ADMINISTRATION OF NUTRITION AND HYDRATION:

(I) IS NOT MEDICALLY POSSIBLE;

(II) WOULD ITSELF CAUSE SEVERE, INTRACTABLE AND LONG-LASTING PAIN TO THE INCOMPETENT PERSON;

(III) COULD NOT BE PHYSICALLY ASSIMILATED BY THE INCOMPETENT PERSON; OR

(IV) WOULD CAUSE SERIOUS UNCORRECTABLE MEDICAL COMPLICATIONS.

(4) IF, IN THE REASONABLE MEDICAL OPINION OF THE ATTENDING PHYSICIAN, THE INCOMPETENT PERSON:

(I) IS CHRONICALLY AND IRREVERSIBLY INCOMPETENT; AND

(II) IS IN THE FINAL STAGE OF A TERMINAL CONDITION AND WHOSE DEATH FROM THE UNDERLYING TERMINAL CONDITION IS IMMINENT, PROVIDED HOWEVER, NUTRITION AND HYDRATION MAY NOT BE WITHHELD OR WITHDRAWN IF THE INCOMPETENT PERSON WOULD DIE AS A RESULT OF THE DEPRIVATION OF NUTRITION AND HYDRATION RATHER THAN FROM THE UNDERLYING TERMINAL CONDITION.

(B) PROHIBITION.--THIS ACT SPECIFICALLY PROHIBITS ANY PERSON FROM AUTHORIZING THE WITHDRAWAL OR WITHHOLDING OF NUTRITION AND HYDRATION, AND ANY HEALTH CARE PROVIDER OR OTHER PERSON FROM WITHDRAWING OR WITHHOLDING NUTRITION OR HYDRATION FROM AN INCOMPETENT PERSON EXCEPT AS PROVIDED IN THIS ACT.

(C) OTHER MEASURES.--NOTHING IN THIS ACT SHALL RELIEVE THE PHYSICIAN, HEALTH CARE PROVIDER OR HEALTH CARE FACILITY OF THE OBLIGATION TO PROVIDE OTHER MEASURES DEEMED NECESSARY TO PROVIDE COMFORT TO A PERSON OR TO ALLEVIATE HIS PAIN REGARDLESS OF WHETHER A PERSON HAS A TERMINAL CONDITION.

Section ~~12~~ 13. Penalties. <—

BROWNING, KALECZYC, BERRY & HOVEN, P.C.
ATTORNEYS AT LAW
139 NORTH LAST CHANCE GULCH
POST OFFICE BOX 1697
HELENA, MONTANA 59624

TELEPHONE (406) 449-6220
TELEFAX (406) 443-0700

R. STEPHEN BROWNING
STANLEY T. KALECZYC
LEO BERRY
J. DANIEL HOVEN
OLIVER H. GOE

KATHARINE S. DONNELLEY
CATHERINE A. LAUGHNER
JOHN H. MAYNARD
JON METROPOULOS
MARCIA D. MORTON
LEO S. WARD

TO: Dr. Ken Eden
Director, Montana Medical
Association Legislative Committee

SENATE HEALTH & WELFARE
EXHIBIT NO. 11
DATE 3/18
H BILL NO. 635

FROM: Steve Browning, MHA Counsel RSB

DATE: March 4, 1991

SUBJECT: HB 635 -- Uniform Rights of The Terminally Ill Act

I am enclosing a copy of the "Notes and Comments" from the National Conference of Commissioners on Uniform State Laws in connection with the possible adoption of amendments to Montana's Living Will Act (cf. HB 635, introduced by Representative Measure, D. Kalispell). The notes and comments should be of considerable help to you in interpreting the new Montana law if it passes the 1991 Legislature. As you know, HB 635 has passed the Montana House of Representatives, unamended, and is now pending in the Senate Public Health Committee. No hearing has yet been set.

The attached comments were helpful in answering legislators' questions. However, they were also confusing, because the section numbers of the bills do not correspond in all cases. The table below will guide you to the proper sections if you need further interpretation of HB 635. Please call if you have questions.

SECTIONS IN HB 635	SECTIONS OF UNIFORM ACT
1. Short Title	16. same
2. Definitions	1. same
3. Declaration relating to ...	2. same
4. Revocation of declaration ...	4. same
5. Recording determination ...	5. same
6. Treatment of qualified patients	6. same
7. Transfer of patients	8. same
8. Immunities	9. same
9. Effect on insurance	11. similar
10. Penalties	10. same
11. When declaration operative	3. same
12. Consent by others to withholding...	7. same
13. When health care provider may ...	12. same
14. Effect of previous declaration	14. same
15. Codification instructions	No comparable section
16. Effective date	18. same

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

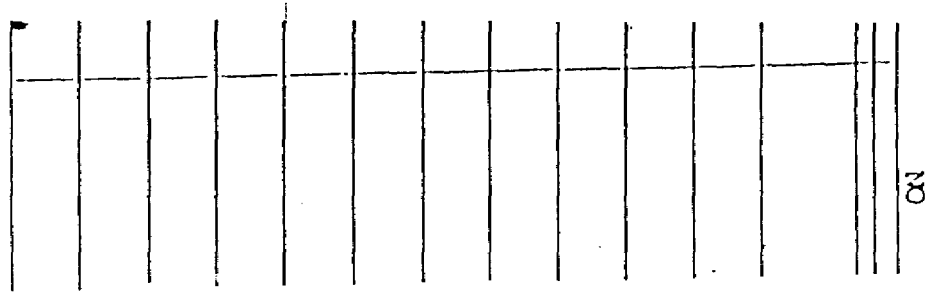
ANNUAL CONFERENCE
MEETING IN ITS NINETY-EIGHTH YEAR
IN KAUAI, HAWAII
JULY 28 - AUGUST 4, 1989

WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
Los Angeles, California, February 13, 1990

p. 1-29

There being



NO

Time 4:30 p.m.

DATE 2/18/91

COMMITTEE ON Sen. Public Health, Welfare + Safety

HB 620, 635, 713, 831, 862

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
DARRYL BRUNO	Institutional	831	✓	
Earl Thoren	Amer. Lung Assn	620	✓	
Kelly Moore	Board of Visitors	713/862	✓	
JANE EDWARDS	Mt. State Hospital	862	✓	
Michael Biggins	MT. Soc. of Respiratory Care	620	✓	
Hank Hudson	Office on Aging, Gov. Office	635/713	✓	
Ruth Lundy	MT SOCIETY FOR RESPIRATORY CARE	620	✓	
Nicholas Walter	MT Society Resp Care	620	✓	
Rose Hughes	MT. Hlth Care Assn	635	✓	
John O'Brien	MT CATHOLIC CONF	635	✓	
Mike Ferriter	CDPM	831	✓	
Steve Browning	Mt Hosp Assn	635	✓	
Jim Mems	Mt. Hosp Assn	620		✓

(Please leave prepared statement with Secretary)

EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 40

Motion:

Senator Towe moved adoption of the amendments denoted in Exhibit #1.

Discussion:

Senator Towe said he thought these changes better reflected the state of Medicare and Medicaid in Montana.

Amendments, Discussion, and Votes:

There being no objections the motion carried.

Recommendation and Vote:

Senator Towe moved concurrence as amended. There being 7 ayes and 1 nay by Senator Rye the motion carried.

EXECUTIVE ACTION ON HOUSE BILL 635

Motion:

Senator Franklin moved concurrence.

Discussion:

Chairman Eck wanted to know about page 4, line 4, regarding its effect on people suffering for diabetes.

Senator Hager said it was a painful death if insulin was withheld.

Senator Jacobson said the danger in messing around with the bill was the impact it would have on the caregivers.

Senator Rye said he was reluctant to amend the bill.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

There being 7 ayes, 1 present by Senator Hager and 0 nays the motion carried.

ROLL CALL

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

Date 03/25/91

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BURNETT	X		
SENATOR FRANKLIN	X		
SENATOR HAGER	X		
SENATOR JACOBSON	X		
SENATOR PIPINICH	X		
SENATOR RYE	X		
SENATOR TOWE	X		
SENATOR ECK	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 26, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 635 (third reading copy as amended -- blue), respectfully report that House Bill No. 635 be concurred in.

Signed: Dorothy Eck

Dorothy Eck, Chairman

AC 3-26-91
Amd. Coord.

SB 3-26-91 5:10
Sec. of Senate

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date 03/25/91 H Bill No. 635 Time 6:40 p.m.

NAME	YES	NO
SENATOR BURNETT	X	
SENATOR FRANKLIN	X	
SENATOR HAGER Present Not Voting		
SENATORJACOBSON	X	
SENATOR PIPINICH	X	
SENATOR RYE	X	
SENATOR TOWE	X	
SENATOR ECK	X	

Secretary Chairman

Motion: Senator Franklin moved concurrence. There being 7 ayes, 1 present and 0 nays the motion carried.

1987